

the same or functionally equivalent relief identified in the petition pursuant to the administrative appeals process under § 808.2 will not be eligible for consideration by the Commission absent new facts not known or readily discernable at the time of consideration of the petitioner's previous request for administrative appeal filed pursuant to § 808.2.

(b) If the project sponsor fails to comply with any term or condition of a Commission approval, the Commission may issue an order suspending, modifying or revoking its approval of the project. The Commission may also, in its discretion, suspend, modify or revoke its approval if the project sponsor fails to obtain or maintain other federal, state or local approvals.

(c) For any previously approved project where interference occurs, the Commission may require a project sponsor to provide a temporary source of potable water at the project sponsor's expense, pending a final determination of causation by the Commission.

(d) The Commission, upon its own motion, may at any time reopen any project approval and make additional corrective modifications that may be necessary.

[71 FR 78579, Dec. 29, 2006, as amended at 74 FR 49813, Sept. 29, 2009]

#### § 806.33 Interest on fees.

The Executive Director may establish interest to be paid on all overdue or outstanding fees of any nature that are payable to the Commission.

#### § 806.34 Emergencies.

(a) *Emergency certificates.* The other requirements of these regulations notwithstanding, in the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or water resources when circumstances do not permit a review and determination in the regular course of the regulations in this part, the Executive Director, with the concurrence of the chairperson of the Commission and the commissioner from the affected member state, may issue an emergency certificate authorizing a project sponsor

to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review and determination by the Commission as otherwise required by this part.

(b) *Notification and application.* A project sponsor shall notify the Commission, prior to commencement of the project, that an emergency certificate is needed. If immediate action, as defined by this section, is required by a project sponsor and prior notice to the Commission is not possible, then the project sponsor must contact the Commission within one (1) business day of the action. Notification may be by certified mail, facsimile, telegram, mailgram, or other form of written communication. This notification must be followed within one (1) business day by submission of the following:

(1) A completed emergency application form or copy of the State or Federal emergency water use application if the project sponsor also is requesting emergency approval from either a state or federal agency.

(2) As a minimum, the application shall contain:

- (i) Contact information.
- (ii) Justification for emergency action (purpose).
- (iii) Location map and schematic of proposed project.
- (iv) Desired term of emergency use.
- (v) Source(s) of the water.
- (vi) Quantity of water.
- (vii) Flow measurement system (such as metering).
- (viii) Use restrictions in effect (or planned).
- (ix) Description of potential adverse impacts and mitigating measures.

(x) Appropriate fee, unless reduced, waived or delayed with the approval of the Executive Director.

(c) *Emergency certificate issuance.* The Executive Director shall:

(1) Review and act on the emergency request as expeditiously as possible upon receipt of all necessary information stipulated in paragraph (b)(2) of this section.

(2) With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, issue an emergency certificate for a term not to extend beyond the

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next regular business meeting of the Commission.

(3) Include conditions in the emergency certificate which may include, without limitation, monitoring of withdrawal and/or consumptive use amounts, measurement devices, public notification, and reporting, to assure minimal adverse impacts to the environment and other users.

(d) *Post approval.* Actions following issuance of emergency certificates may include, but are not limited to, the following:

(1) The Commission may, by resolution, extend the term of the emergency certificate, upon presentation of a request from the project sponsor accompanied by appropriate evidence that the conditions causing the emergency persist.

(2) If the condition is expected to persist longer than the specified extended term, the project sponsor must submit an application to the Commission for applicable water withdrawal or consumptive use, or the emergency certificate will terminate as specified. If the project sponsor has a prior Commission approval for the project, the project sponsor must submit an application to modify the existing docket accordingly.

(e) *Early termination.* With the concurrence of the chairperson of the Commission and the commissioner from the affected member state, the Executive Director may terminate an emergency certificate earlier than the specified duration if it is determined that an emergency no longer exists and/or the certificate holder has not complied with one or more special conditions for the emergency withdrawal or consumptive water use.

(f) *Restoration or mitigation.* Project sponsors are responsible for any necessary restoration or mitigation of environmental damage or interference with another user that may occur as a result of the emergency action.

EFFECTIVE DATE NOTE: At 79 FR 15909, Mar. 24, 2014, § 806.34 was amended by revising paragraphs (a), (b) introductory text, (b)(2) introductory text, and (b)(2)(iii), effective June 1, 2014. For the convenience of the user, the revised text is set forth as follows:

### § 806.34 Emergencies.

(a) *Emergency certificates.* The other requirements of these regulations notwithstanding, in the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or water resources when circumstances do not permit a review and determination in the regular course of the regulations in this part, the Executive Director, with the concurrence of the chairperson of the Commission and the commissioner from the affected member state, may issue an emergency certificate authorizing a project sponsor to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review and determination by the Commission as otherwise required by this part. In the exercise of such authority, consideration should be given to actions deemed necessary to sustain human life, health and safety, or that of livestock or food, fiber or forage crops, the maintenance of electric system reliability to serve such needs, to avoid significant disruption of employment, or any other such priorities that the Commission may establish from time to time utilizing its authority under Section 11.4 of the Compact related to drought emergencies.

(b) *Notification and application.* A project sponsor shall notify the Commission, prior to commencement of the project, that an emergency certificate is needed. In the case of a project operating under an existing Commission approval seeking emergency approval to modify, waive or partially waive one or more conditions of such approval, notice shall be provided to the Commission prior to initiating the operational changes associated with the request. If immediate action, as defined by this section, is required by a project sponsor and prior notice to the Commission is not possible, then the project sponsor must contact the Commission within one (1) business day of the action. Notification may be by certified mail, facsimile, telegram, mailgram, electronic mail or other form of written communication. This notification must be followed within one (1) business day by submission of the following:

\* \* \* \* \*

(2) At a minimum, the application shall contain:

\* \* \* \* \*

(iii) Location map and schematic of proposed project, or in the case of a project operating under an existing Commission approval, the project approval reference and a

description of the operational changes requested.

\* \* \* \* \*

#### **§ 806.35 Fees.**

Project sponsors shall have an affirmative duty to pay such fees as established by the Commission to cover its costs of administering the regulatory program established by this part, including any extraordinary costs associated with specific projects.

[71 FR 78579, Dec. 29, 2006, as amended at 75 FR 60622, Oct. 1, 2010]

### **PART 807—WATER WITHDRAWAL REGISTRATION**

Sec.

807.1 Requirement.

807.2 Time limits.

807.3 Administrative agreements.

807.4 Effective date.

807.5 Definitions.

AUTHORITY: Secs. 3.4(2) and (9), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 *et seq.*

SOURCE: 71 FR 78588, Dec. 29, 2006, unless otherwise noted.

#### **§ 807.1 Requirement.**

In addition to any other requirements of Commission regulations, and subject to the consent of the affected member state to this requirement, any person withdrawing or diverting in excess of an average of 10,000 gpd for any consecutive 30-day period, from ground or surface water sources, as defined in part 806 of this chapter, shall register the amount of this withdrawal with the Commission and provide such other information as requested on forms prescribed by the Commission.

#### **§ 807.2 Time limits.**

(a) Except for agricultural water use projects, all registration forms shall be submitted within one year after May 11, 1995, or within six months of initiation of the water withdrawal or diversion, whichever is later; provided, however, that nothing in this section shall limit the responsibility of a project sponsor to apply for and obtain an approval as may be required under part 806 of this chapter. All registered withdrawals shall re-register with the Com-

mission within five years of their initial registration, and at five-year intervals thereafter, unless the withdrawal is sooner discontinued. Upon notice by the Executive Director, compliance with a registration or reporting requirement, or both, of a member state that is substantially equivalent to this requirement shall be considered compliance with this requirement.

(b) Project sponsors whose existing agricultural water use projects i.e., projects coming into existence prior to March 31, 1997) withdraw or divert in excess of an average of 10,000 gpd for any consecutive 30-day period from a ground or surface water source shall register their use no later than March 31, 1997. Thereafter, project sponsors of new projects proposing to withdraw or divert in excess of 10,000 gpd for any consecutive 30-day period from a ground or surface water source shall be registered prior to project initiation.

#### **§ 807.3 Administrative agreements.**

The Commission may complete appropriate administrative agreements or arrangements to carry out this registration requirement through the offices of member jurisdictions. Forms developed by the Commission shall apprise registrants of any such agreements or arrangements, and provide appropriate instructions to complete and submit the form.

#### **§ 807.4 Effective date.**

This part shall be effective on January 1, 2007.

#### **§ 807.5 Definitions.**

Terms used in this part shall be defined as set forth in § 806.3 of this chapter.

### **PART 808—HEARINGS AND ENFORCEMENT ACTIONS**

#### **Subpart A—Conduct of Hearings**

Sec.

808.1 Public hearings.

808.2 Administrative appeals.

808.3 Hearings on administrative appeal.

808.4 Optional joint hearing.

#### **Subpart B—Compliance and Enforcement**

808.10 Scope of subpart.